



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF ERKNER AND HOF AUER v. AUSTRIA (ARTICLE 50)

(Application no. 9616/81)

JUDGMENT

STRASBOURG

29 September 1987

In the case of Erkner and Hofauer*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. R. RYSSDAL, *President*,

Mr. G. LAGERGREN,

Mr. F. GÖLCÜKLÜ,

Mr. F. MATSCHER,

Mr. B. WALSH,

Sir Vincent EVANS,

Mr. C. RUSSO,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 22 September 1987,

Delivers the following judgment, which was adopted on that date:

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 May 1986. It originated in an application (no. 9616/81) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by a number of Austrian nationals - Mr. Johann Erkner, Mrs. Theresia Erkner and, after Mr. Erkner's death, Mr. Josef Hofauer and Mrs. Theresia Hofauer - in 1979 and 1984.

2. In its judgment of 23 April 1987, the Court held that there had been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (art. 6-1, P1-1) in that the length of consolidation proceedings affecting land belonging to the applicants had exceeded a "reasonable time" and infringed the applicants' right of property (Series A no. 117, pp. 61-67, paragraphs 64-80 of the reasons and points 1 and 3 of the operative provisions).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the case. Accordingly, as regards the facts, reference should be made to paragraphs 8-57 of the aforementioned judgment (*ibid.*, pp. 44-59).

* Note by the Registrar: The case is numbered 16/1986/114/162. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

3. The applicants claimed compensation in the sum of 760,000 Austrian schillings (ATS) for pecuniary damage and reimbursement of lawyers' fees, which they put at 582,099.10 ATS. The Austrian Government ("the Government") and the Commission did not express a view on the matter.

As the question of the application of Article 50 (art. 50) was therefore not ready for decision, the Court, in its judgment of 23 April 1987, reserved it and invited the Government to submit their written comments within the next two months and, in particular, to notify the Court of any agreement reached between themselves and the applicants.

4. The Government's memorial was received at the registry on 13 May 1987 and the applicants' reply on 5 June.

5. On 7 July, the applicants filed an offer of friendly settlement which the Government had made to them on 23 June. It read as follows:

"...

With reference to the settlement talks held at the Federal Ministry of Foreign Affairs on 13 May 1987 and 15 June 1987 in respect of the human-rights case of Erkner and Hofauer against the Republic of Austria, the Federal Ministry of Foreign Affairs has the honour to suggest the following procedure for agreeing and implementing a settlement in just satisfaction pursuant to Article 50 (art. 50) of the Convention.

1. Having regard to the judgment of the European Court of Human Rights on 23 April 1987 in the case of Erkner and Hofauer (16/1986/114/162), the Republic of Austria states its willingness to pay the applicants a sum of 650,000 ATS (i.e. 350,000 ATS compensation and 300,000 ATS in costs). The applicants accept this sum in settlement of the expenses they incurred in taking legal action (costs of proceedings - domestic and other) and to cover all damage arising out of the proceedings up to and including 31 December 1986.

2. The applicants will withdraw the application that they have made in this case to the Constitutional Court (B 255/86) as soon as the aforementioned sums have been paid into the account of their legal representative.

3. This sum shall be paid on trust (zu treuen Handen) to the applicants' legal representative, Dr. Erich Proksch, Post Office Giro account no. 154 5595, in two separate instalments: the Land of Upper Austria will pay 450,000 ATS and the Federation 200,000 ATS by 15 July 1987 at the latest.

4. A precondition of the payment of the sum due from the Federation to the applicants' legal representative is that the applicants shall produce a certificate to the effect that no tax demands by the Federation are outstanding against them.

5. Dr. Proksch undertakes to administer the said sums until the European Court of Human Rights has decided to strike the case in question out of the list of pending cases.

6. If the Court should decline to strike the case out, the sums would be repayable to the Federal Ministry of Agriculture and Forestry and to the Land of Upper Austria by Dr. Proksch. Dr. Proksch would in that case be given the relevant account numbers immediately.

7. The applicants declare that after performance of items 1-5 above, they will not assert, in respect of the period up to and including 31 December 1986, any claims against the Republic of Austria, either in an Austrian court or before an international or other authority, which in any way relate to the subject of application no. 9616/81 to the European Commission of Human Rights or case no. 16/1986/114/162 before the European Court of Human Rights.

This letter and the reply in confirmation of it shall constitute an agreement within the meaning of Rule 53 § 4 of the Rules of Court of the European Court of Human Rights.

For the Federal Minister

Signed: Dr. Strohal"

The applicants' lawyer had replied on 29 June in the following terms:

"Thank you for your letter of 23 June 1987 concerning the above two cases of human-rights violations [Erkner and Hofauer; Poiss]. I agree to the proposed settlement. I have asked my clients in both cases to produce certificates from the Tax Office to the effect that no tax debts are outstanding. Should the Republic of Austria not issue these certificates promptly, my clients must not thereby suffer any prejudice.

I am accordingly expecting the time-limit to be complied with and that the amount of 1,350,000 ATS [650,000 ATS in the Erkner and Hofauer case; 700,000 ATS in the Poiss case] will be paid into my Post Office Giro account by 15 July 1987 at the latest. At the same time, I have informed the European Court of Human Rights of the agreed settlement and asked it to strike the cases out of its list as soon as I have let Strasbourg know that the amount of the settlement has in fact reached me by 15 July 1987.

...

Signed: Dr. E. Proksch"

The applicants therefore requested the Court to strike the case out of its list once it had satisfied itself of the equitable nature of the settlement thus agreed upon.

6. On 16 July, the Permanent Representative of Austria to the Council of Europe confirmed that his Government had agreed to pay the applicants the sum of 650,000 ATS and that this amount had been paid to them in the meantime. On behalf of his Government he accordingly likewise requested that the case should be struck out.

7. The Delegate of the Commission, when consulted, made it known on 12 August that he endorsed that course of action.

On the same day, the applicants' lawyer informed the Registrar that he had indeed received the sum in question.

AS TO THE LAW

8. Article 50 (art. 50) of the Convention provides as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Since its judgment of 23 April 1987 on the main issues in this case, the Court has been notified of a friendly settlement reached between the Government and the applicants in respect of the latter's claims under Article 50 (art. 50). Having regard to the nature of the terms agreed and to the consent of the Commission's Delegate, the Court finds that the settlement reached is "equitable" within the meaning of Rule 53 § 4 of the Rules of Court. Accordingly, the Court takes formal note of the settlement and concludes that it would be appropriate to strike the case out of its list pursuant to that Rule.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of its list.

Done in English and in French, and notified in writing under Rule 54 § 2, second sub-paragraph, of the Rules of Court on 29 September 1987.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar